

ORIGINAL
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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Policies and Rules)
Pertaining to the Equal)
Access Obligations of)
Cellular Licensees)

RM-8012

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Common Carrier Bureau

**COMMENTS OF UNITY CELLULAR SYSTEMS, INC.
AND NEBRASKA CELLULAR TELEPHONE CORPORATION**

Unity Cellular Systems, Inc. ("Unicel") and Nebraska Cellular Telephone Corporation ("NCTC"), by their attorneys, hereby submit their comments in opposition to the petition for rulemaking filed by MCI Telecommunications Corporation ("MCI") seeking a Commission requirement that all cellular radio licensees interconnect with interexchange carriers ("IXCs") via uniform, nationwide cellular equal access policies and procedures, and respectfully show as follows:

I. The Commentors

Unicel is the FCC Frequency Block B licensee in the Bangor, Maine NECMA and in Maine RSA 3. In addition, it is presently seeking Commission approval of the assignment of the Frequency Block B license for Maine RSA 2 from the present licensee to a partnership controlled by Unicel.

NCTC is the Frequency Block B licensee in each of the ten RSAs in the State of Nebraska.

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II. MCI's Proposed Imposition of Equal Access Requirements Upon Cellular Carriers Is Not In the Public Interest

A. The Universe of Cellular Subscribers Is Small In Relationship to the Universe of Wireline Local Exchange Telephone Carrier Subscribers

The thrust of MCI's argument for the imposition of equal access requirements upon cellular carriers appears to be one of analogy. Specifically, MCI appears to be arguing from the premise that cellular is, or is fast becoming, substitutable for the conventional wireline telephone services which are subject to equal access requirements, concluding a priori, that equal access obligations must be imposed upon the cellular industry. MCI's logic relies upon a wholly fallacious premise.

Notwithstanding MCI's attempt to portray the cellular industry as a direct substitute for the services of wireline local exchange telephone carriers ("LECs"), the present reality is quite different. The cellular industry at the current stage of its evolution is, and may continue to be for the foreseeable future, immature in terms of both market penetration^{1/} and profitability. In point of fact, few cellular operators are operating at a profit or are cash flow positive at this point in time. This is particularly true of small market operators such as Unicel and NCTC.

^{1/} The much vaunted concept of "pops" in the cellular industry represents potential, not actual, customers in a given cellular market. The figure of 8,000,000 existing cellular customers mentioned by MCI at page 2 of its petition pales in comparison to "pops" in the United States, as a whole.

In contrast to LEC basic exchange services, cellular is not a monopoly service subject to universal service obligations and government policies mandating low basic rates, fostered by elaborate, government sanctioned subsidy schemes at both the federal and state levels. Cellular carrier profits, when they come at all, come from the sale of competitive services at cost-based rate levels, with little, if any, opportunity to defray huge capital and start up costs from other sources. Cellular is not regulated at the state level in the same manner as are LECs, when regulated at all, for a very simple reason--cellular is not directly substitutable for LEC basic exchange services at this stage of its evolution. This being so, MCI's reliance on its "LEC-cellular analogy" offers no rationale for imposing upon the fledgling cellular industry, an obligation that heretofore has been imposed upon monopoly LECs.^{2/}

^{2/} It is correct, as MCI suggests in its petition, that the Bell Operating Company affiliated cellular systems are subject to antitrust court decreed equal access obligations. However, this obligation was imposed because of past discriminatory conduct by the BOC owners of these cellular systems rather than as the result of an FCC determination that cellular equal access is in the public interest.

B. Resale of Interexchange Services Is Not Universal In the Cellular Industry

Even if the provision of equal access services is universally possible (which is not the case, as shown in subsection II.D., infra), MCI offers no factual support for the contention on page 3 of its petition that non-Bell Operating Company ("BOC") cellular carriers ". . .for the most part. . .resell interexchange service to their subscribers at full market rates."

First, many newly operational and/or small market cellular operators have such a small base of subscribers that resale operations are not a viable option at this point in time. MCI has been and remains an aggressive marketer of "bulk" interexchange services to cellular carriers for purposes of resale, i.e., interexchange services generally involving dedicated access arrangements between the cellular carrier and the interexchange carrier, featuring attractive rates which reflect the cellular carrier's traffic volumes. As a result of this activity, MCI is surely aware that not every cellular carrier is able, from the perspective of economics, to engage in resale operations. Success in resale requires that the potential reseller have a predictable volume of interexchange traffic sufficient in amount to justify contractually committing to a "bulk" service offering. Many cellular carriers are not able to meet this criterion and, must, instead, subscribe to much higher priced MTS-like or "low-end" WATS-like services. The opportunity to make a profit from resale of MTS-like or low-end WATS-like services is not great.

Second, a substantial amount of interexchange services provided by cellular carriers actually involve no resale of services provided by MCI or other third party carriers. Most cellular systems cover more than a single underlying LEC exchange area and, in many instances, cover points in more than one Local Exchange and Access Area ("LATA"). Further, many cellular systems are in regional clusters which embrace large geographic areas overlaying multiple LEC exchange areas and LATAs. In these instances (including BOC-affiliated cellular systems where appropriate Modified Final Judgment waivers have been granted), cellular carriers generally utilize their own or leased dedicated facilities to handle traffic within their territories, providing services in large areas without imposition of any toll charges.

Third, MCI has offered no factual support for its claim that cellular carriers involved in resale of interexchange services are charging customers "full market rates," a concept which is undefined. Even if MCI's assertion is correct, the continuation of such resale operations is in the public interest, as shown more fully in the next subsection of these comments.

C. To the Extent That Cellular Carriers Are Engaged In Interexchange Resale Operations, the Profits, If Any, From Such Operations Are Critical In Defraying Other Operational Costs

Cellular is, as noted previously, an immature business characterized by extremely high capital and other start up costs. Unlike LECs, which generally are able to borrow funds at the most advantageous rates available and which are able to defray their

costs of local exchange services with government sanctioned, subsidy-laden revenues from other sources, cellular providers are constrained to provide their basic services at rates which reflect actual costs. Further, many cellular carriers lack a large base of customers to spread these costs over. As a result of these factors, cellular air time and other basic service rates are extremely high in comparison to LEC exchange service rates.

The available profits, if any, from cellular interexchange resale operations represent one of the few available sources of defrayment for a cellular carrier's high costs of operation. As such, those profits represent one of the few methods available to cellular carriers to keep their basic service rates to the public at acceptable levels. Absent the continued availability of resale revenues or a replacement, such as IXC originating and terminating access charges, including non-traffic sensitive cost recovery elements, basic service rates of many cellular carriers might be forced higher than they are at present.

D. Cellular Carrier Provision of Equal Access Is Technically Difficult, If Not Impossible, In Many Circumstances

Even if the imposition of an equal access requirement upon cellular carriers was otherwise in the public interest, many cellular carriers are technically able to provide equal access services with great difficulty, if at all.

Only those cellular carriers with what is known as Type 2 interconnection, i.e., access tandem level interconnection, are able to provide equal access to interexchange carriers. In this configuration, the cellular carrier is identical to any LEC end office in the telephone network and can, if its Mobile Telephone Switching Office ("MTSO") is so configured and the necessary software purchased, provide equal access service.

However, many cellular carriers, particularly in smaller MSA markets and RSAs, are unable to utilize Type 2 interconnection arrangements and must, instead, utilize Type 1 services. The reason for this is frequently driven by practical economics because many LEC Type 2 offerings impose a monthly, mileage sensitive trunking charge between an MTSO and a tandem switch. This fixed trunking charge can make Type 2 arrangements economically prohibitive if there is a significant distance between a cellular MTSO and a tandem switch. Type 1 interconnection involves connection of the cellular MTSO to a LEC end office in a manner similar to PBX interconnection. As such, the cellular carrier lacks the necessary direct physical connection to the access tandem required for equal access signalling, and is, therefore, incapable of providing equal access services to IXC's.

Further, even if a cellular carrier has Type 2 interconnection, it may still be unable to provide equal access services because of the design of its MTSO. For example, the MTSO equipment provided by NovAtel does not support equal access services and no indication has been made by the company that

recently acquired NovAtel's assets that such a capability will ever be available. Unice1 utilizes a NovAtel MTSO, as do many other small market operators. Other manufacturers of MTSO equipment can provide equal access software, albeit at substantial cost. In the cellular equal access environment suggested by MCI, the costs of equal access implementation should appropriately be recouped from IXCs in the form of access charges, rather than being foisted upon cellular subscribers.

E. MCI's Proposed Imposition of Equal Access Requirements Upon Cellular Carriers Is Impractical

Even if the imposition of an equal access requirement upon cellular carriers was otherwise desirable, practical regulatory and economic considerations dictate against the proposal.

A natural corollary of MCI's proposal is that IXCs should be required to compensate cellular carriers for their provision of "first and last mile" services on interexchange calls, presumably in the form of access charges structured on the LEC model. MCI's suggestions in this regard are conspicuously missing from its petition, even though access charge-related issues are a natural consequence of its proposal.

At a minimum, the following thorny and controversial regulatory and economic issues would have to be addressed by the FCC and state regulators as a consequence of possible imposition of an equal access requirement upon cellular carriers:

- (1) regulatory jurisdiction over cellular access charge tariffs and, in all likelihood, all cellular services;

- (2) jurisdictional separations issues pertaining to cellular plant and other costs;
- (3) cellular accounting standards issues;
- (4) cellular costing methodologies;
- (5) cellular access charge structural issues, particularly as they pertain to cellular non-traffic sensitive plant; and
- (6) cellular access charge levels.

In an equal access environment, Unice1 and NCTC would insist upon the creation of an equal access recovery and access charge structure which would mirror the structure, if not necessarily the rates, contained in comparable LEC state and interstate tariffs. In particular, these carriers would intend to fashion non-traffic sensitive plant cost recovery elements to recover a contribution to their fixed plant costs.^{3/} It is foreseeable that disputes with MCI and other IXCs over this and related issues would follow, necessitating regulatory intervention.

Resolution of the foregoing issues will, in all likelihood, be protracted and unduly burdensome for all parties concerned, including the FCC and state regulators. Unice1 and NCTC strongly believe that the costs and burdens inherent in achieving an equal access cost recovery methodology and access charge structure far outweigh any possible benefit to cellular customers in having equal

^{3/} Both carriers are involved in resale operations at present in order to achieve a measure of contribution to their high levels of capital and borrowing costs.

access services available.

Conclusion

MCI has not shown in its petition that any valid public interest would be served by promulgating a rule making proceeding having, as its purpose, the imposition of an equal access requirement upon cellular carriers. Unice1 and NCTC have shown that such a requirement is, in many instances, technically impossible. Even when technically feasible, the implementation of an equal access requirement would impose regulatory burdens and costs upon cellular carriers, IXCs, and regulatory authorities which could outweigh any possible benefits that might flow to the public. MCI's petition for rulemaking should be denied.

Respectfully submitted,

UNITY CELLULAR SYSTEMS, INC.

NEBRASKA CELLULAR TELEPHONE
CORPORATION

By: 

Richard M. Tettelbaum

Gurman, Kurtis, Blask and Freedman, Chartered
1400 Sixteenth Street, Suite 500
Washington, D.C. 20036
(202) 328-8200

Their Attorneys

Dated: September 1, 1992

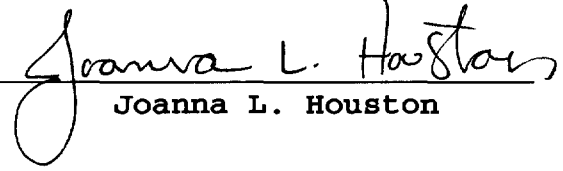
CERTIFICATE OF SERVICE

I, Joanna L. Houston, a secretary in the law offices of Gurman, Kurtis, Blask and Freedman, Chartered, do hereby certify that I have on this 1st day of September, 1992, had copies of the foregoing "COMMENTS OF UNITY CELLULAR SYSTEMS, INC. AND NEBRASKA CELLULAR TELEPHONE CORPORATION", by hand delivery, to the following:

Michael Mandigo
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room Number 518 - Stop Code 1600
Washington, D.C. 20554

Larry A. Blosser, Esquire
MCI
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Downtown Copy Center
1114 21st Street, N.W., Suite 140
Washington, D.C. 20037


Joanna L. Houston